



February 18, 2003

SENATE BILL No. 291

DIGEST OF SB 291 (Updated February 17, 2003 12:37 PM - DI 102)

Citations Affected: IC 14-33; noncode.

Synopsis: Conservancy districts. Requires mailed notice of an annual meeting to all freeholders of a conservancy district. Specifies the procedure for voting by absentee ballot in district board elections. Requires mailed notice to all freeholders in a district of a hearing concerning the district's proposed ordinance to establish, change, or readjust a district's rates and charges for the collection, treatment, and disposal of sewage and liquid waste. Requires the notice to include a statement informing the freeholders of their right to file a petition objecting to an ordinance increasing rates at a yearly rate that is greater than 5%. Establishes the minimum number or proportion of freeholders in a district signing a petition objecting to an ordinance increasing the rates. Eliminates the presumption that rates and charges adopted by a district are just and equitable.

Effective: July 1, 2003.

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January 15, 2003, read first time and referred to Committee on Elections and Civic Affairs.
February 17, 2003, amended, reported favorably — Do Pass.

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SB 291—LS 6897/DI 101+



February 18, 2003

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

SENATE BILL No. 291

A BILL FOR AN ACT to amend the Indiana Code concerning natural and cultural resources.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 14-33-5-2 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) At each annual
3 meeting of the district, directors shall be elected to fill vacancies on the
4 board due to expiration of terms, resignation, or otherwise. The election
5 shall be conducted by written ballots. To be elected an individual must
6 receive a majority of the votes of the freeholders of the district who are:

7 (1) present and voting in person; or

8 (2) absent but have mailed or delivered a written **absentee** ballot
9 ~~vote~~; **included in the notice mailed under section 4(b) of this**
10 **chapter.**

11 (b) A written **absentee** ballot ~~vote~~ must be signed **by the freeholder**
12 **casting the ballot and mailed or delivered returned:**

13 (1) **in person to the district office: location specified in the**
14 **notice mailed under section 4(b) of this chapter on or before**
15 **the ending time for voting in person on the date of the annual**
16 **meeting; or**

17 (2) **by mail to an address specified in the notice mailed under**

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section 4(b) of this chapter.

(c) **★ An absentee** ballot is valid if delivered or received **on or** before the scheduled date of the annual meeting.

SECTION 2. IC 14-33-5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. (a) The annual meeting of the district must be held at the time designated by the court:

(1) at the district's office; or

(2) at a place in or near the district as determined by resolution of the board adopted before December 1 of the year.

(b) Notice of the annual meeting of the district ~~must~~ **shall** be given as follows:

(1) By one (1) publication in a newspaper of general circulation in each county in the district at least fourteen (14) and not more than thirty-one (31) days before **the date fixed in the notice for** the annual meeting.

(2) **By mail to all freeholders on the list prepared under section 5 of this chapter not later than fourteen (14) days before the date fixed in the notice for the annual meeting. The notice required under this subdivision may be included in a district's periodic billing if the billing is postmarked not later than fourteen (14) days before the date fixed in the notice for the annual meeting.**

(c) The notice **required by subsection (b)** must contain the following:

(1) The names of the nominees.

(2) The place where the election will be held.

(3) The time of the election.

(4) The fact that this is the annual meeting of the district.

(5) The purposes of the meeting.

(6) The time during which **in person** ballots may be cast.

(d) **A mailed notice under subsection (b)(2) must include an absentee ballot and instructions for completing and returning the ballot by mail or in person as required by section 2(b) of this chapter.**

SECTION 3. IC 14-33-5-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 6. (a) At each annual meeting and before the election of directors, the chairman shall appoint three (3) freeholders of the district who are present at the annual meeting to act as clerks of and conduct the election.

(b) Before the casting of ~~a~~ **an in person** vote, each freeholder must sign the list of freeholders opposite the freeholder's name in the presence of the secretary of the district. If the clerks find that a

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freeholder's name is erroneously omitted from the list, the clerks shall place the name on the list. The omitted freeholder is then entitled to cast a ballot.

(c) The clerks shall note the fact of receipt of a valid written ballot vote, **whether cast in person or absentee**, opposite the freeholder's name who cast that vote. At this time the written ballot vote is considered cast.

(d) At the close of the election poll, the clerks shall count the cast ballots and make a report of the results. The secretary of the district shall record the results in the records of the district. The chairman shall then declare the successful nominees elected, and the elected directors are entitled to and shall assume all the duties of the office for which elected.

SECTION 4. IC 14-33-5-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 21. (a) If the board issues revenue bonds for the collection, treatment, and disposal of sewage and liquid waste, the board may do the following:

(1) **Subject to sections 21.5, 21.6, and 21.7 of this chapter**, establish just and equitable rates and charges and use the same basis for the rates as provided in IC 36-9-23-25 through IC 36-9-23-29.

(2) Collect and enforce the rates, beginning with the commencement of construction as provided in IC 36-9-23.

(3) Establish rules and regulations.

(4) Require connection to the board's sewer system of any property producing sewage or similar waste and require discontinuance of use of privies, cesspools, septic tanks, and similar structures. The board may enforce this requirement by civil action in circuit or superior court as provided in IC 36-9-23-30.

(5) Provide for and collect a connection charge to the board's sewer system as provided in IC 36-9-23-25 through IC 36-9-23-29.

(6) Contract for treatment of the board's sewage and pay a fair and reasonable connection fee or rate for treatment, or a combination of both, as provided in IC 36-9-23-16.

(7) Secure the bonds by a trust indenture as provided in IC 36-9-23-22.

(8) Create a sinking fund for the payment of principal and interest and accumulate reasonable reserves as provided in IC 36-9-23-21.

(9) Issue temporary revenue bonds to be exchanged for definite revenue bonds as provided in IC 36-9-23-17 through

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IC 36-9-23-20.

(10) Issue additional revenue bonds as part of the same issue if the issue does not meet the full cost of the project for which the bonds were issued as provided in IC 36-9-23-17 through IC 36-9-23-20.

(11) Issue additional revenue bonds for improvements, enlargements, and extensions as provided in IC 36-9-23-18.

(12) Covenant with the holders of the revenue bonds for the following:

(A) Protection of the holders concerning the use of money derived from the sale of bonds.

(B) The collection of necessary rates and charges and segregation of the rates and charges for payment of principal and interest.

(C) Remedy if a default occurs.

The covenants may extend to both repayment from revenues and other money available to the district by other statute as provided in IC 36-9-23.

(b) In the same manner as provided by IC 36-9-23, the rates or charges made, assessed, or established by the district are a lien on a lot, parcel of land, or building that is connected with or uses the works by or through any part of the sewage system of the district. The liens:

(1) attach;

(2) are recorded;

(3) are subject to the same penalties, interest, and reasonable attorney's fees on recovery; and

(4) shall be collected and enforced;

in substantially the same manner as provided in IC 36-9-23-31 through IC 36-9-23-32.

SECTION 5. IC 14-33-5-21.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 21.5. (a) This section applies to all districts.**

(b) Notwithstanding any other law that applies to the establishment of rates and charges by a district, after the introduction of an ordinance establishing rates and charges but before the ordinance is finally adopted, in addition to any other notice required under this chapter, the notice of the hearing setting forth the proposed schedule of rates and charges must be given by mail to all freeholders in the district if the ordinance establishing the rates and charges is introduced after June 30, 2003. A notice mailed under this subsection must be postmarked not later than



ten (10) days before the date fixed in the notice for the hearing. The notice required under this subsection may be included in the district's periodic billing if the billing is postmarked not later than ten (10) days before the date fixed in the notice for the hearing.

(c) In the case of an increase or a readjustment in the rates or charges that is greater than five percent (5%) per year, as calculated from the rates and charges in effect from the date of the district's last rate increase before January 1, 2003, the notice required by subsection (b) must contain a statement informing the freeholders in the district of the freeholders' right, under section 21.7 of this chapter and IC 36-9-23-26.1, to file a petition objecting to any ordinance finally adopted by the board that increases the rates and charges.

SECTION 6. IC 14-33-5-21.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 21.6. (a) This section applies to all districts.**

(b) The presumption established by IC 36-9-23-25(b) does not apply to rates and charges established after June 30, 2003, by a district under section 21 of this chapter.

SECTION 7. IC 14-33-5-21.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 21.7. (a) This section applies to all districts.**

(b) Notwithstanding any other law that applies to the establishment of rates and charges by a district, a written petition objecting to an ordinance finally adopted after June 30, 2003, that increases or readjusts the rates and charges of the district may contain the minimum number or proportion of freeholders in the district described in IC 14-33-2-2 as an alternative to the petition requirements described in IC 36-9-23-26.1(a)(2). In all other respects, the procedure provided in IC 36-9-23-26.1 applies to a written petition filed in accordance with this subsection.

SECTION 8. [EFFECTIVE JULY 1, 2003] IC 14-33-5-2, IC 14-33-5-4, and IC 14-33-5-6, all as amended by this act, apply to annual meetings of conservancy districts held after June 30, 2003.



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COMMITTEE REPORT

Mr. President: The Senate Committee on Elections and Civic Affairs, to which was referred Senate Bill No. 291, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning natural and cultural resources.

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 14-33-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) At each annual meeting of the district, directors shall be elected to fill vacancies on the board due to expiration of terms, resignation, or otherwise. The election shall be conducted by written ballots. To be elected an individual must receive a majority of the votes of the freeholders of the district who are:

- (1) present and voting in person; or
- (2) absent but have mailed or delivered a written **absentee** ballot ~~vote~~; **included in the notice mailed under section 4(b) of this chapter.**

(b) A written **absentee** ballot ~~vote~~ must be signed **by the freeholder casting the ballot** and ~~mailed or delivered~~ **returned:**

- (1) **in person** to the ~~district office~~; **location specified in the notice mailed under section 4(b) of this chapter on or before the ending time for voting in person on the date of the annual meeting; or**
- (2) **by mail to an address specified in the notice mailed under section 4(b) of this chapter.**

(c) ~~☆ An~~ **absentee** ballot is valid if delivered or received **on or** before the scheduled date of the annual meeting.

SECTION 2. IC 14-33-5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. (a) The annual meeting of the district must be held at the time designated by the court:

- (1) at the district's office; or
- (2) at a place in or near the district as determined by resolution of the board adopted before December 1 of the year.

(b) Notice of the annual meeting of the district ~~must~~ **shall** be given **as follows:**

- (1) By one (1) publication in a newspaper of general circulation in each county in the district at least fourteen (14) and not more than thirty-one (31) days before **the date fixed in the notice for**

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the annual meeting.

(2) By mail to all freeholders on the list prepared under section 5 of this chapter not later than fourteen (14) days before the date fixed in the notice for the annual meeting. The notice required under this subdivision may be included in a district's periodic billing if the billing is postmarked not later than fourteen (14) days before the date fixed in the notice for the annual meeting.

(c) The notice required by subsection (b) must contain the following:

- (1) The names of the nominees.
- (2) The place where the election will be held.
- (3) The time of the election.
- (4) The fact that this is the annual meeting of the district.
- (5) The purposes of the meeting.
- (6) The time during which **in person** ballots may be cast.

(d) A mailed notice under subsection (b)(2) must include an absentee ballot and instructions for completing and returning the ballot by mail or in person as required by section 2(b) of this chapter.

SECTION 3. IC 14-33-5-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 6. (a) At each annual meeting and before the election of directors, the chairman shall appoint three (3) freeholders of the district who are present at the annual meeting to act as clerks of and conduct the election.

(b) Before the casting of ~~a~~ **an in person** vote, each freeholder must sign the list of freeholders opposite the freeholder's name in the presence of the secretary of the district. If the clerks find that a freeholder's name is erroneously omitted from the list, the clerks shall place the name on the list. The omitted freeholder is then entitled to cast a ballot.

(c) The clerks shall note the fact of receipt of a valid written ballot vote, **whether cast in person or absentee**, opposite the freeholder's name who cast that vote. At this time the written ballot vote is considered cast.

(d) At the close of the election poll, the clerks shall count the cast ballots and make a report of the results. The secretary of the district shall record the results in the records of the district. The chairman shall then declare the successful nominees elected, and the elected directors are entitled to and shall assume all the duties of the office for which elected.

SECTION 4. IC 14-33-5-21 IS AMENDED TO READ AS



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FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 21. (a) If the board issues revenue bonds for the collection, treatment, and disposal of sewage and liquid waste, the board may do the following:

- (1) **Subject to sections 21.5, 21.6, and 21.7 of this chapter,** establish just and equitable rates and charges and use the same basis for the rates as provided in IC 36-9-23-25 through IC 36-9-23-29.
- (2) Collect and enforce the rates, beginning with the commencement of construction as provided in IC 36-9-23.
- (3) Establish rules and regulations.
- (4) Require connection to the board's sewer system of any property producing sewage or similar waste and require discontinuance of use of privies, cesspools, septic tanks, and similar structures. The board may enforce this requirement by civil action in circuit or superior court as provided in IC 36-9-23-30.
- (5) Provide for and collect a connection charge to the board's sewer system as provided in IC 36-9-23-25 through IC 36-9-23-29.
- (6) Contract for treatment of the board's sewage and pay a fair and reasonable connection fee or rate for treatment, or a combination of both, as provided in IC 36-9-23-16.
- (7) Secure the bonds by a trust indenture as provided in IC 36-9-23-22.
- (8) Create a sinking fund for the payment of principal and interest and accumulate reasonable reserves as provided in IC 36-9-23-21.
- (9) Issue temporary revenue bonds to be exchanged for definite revenue bonds as provided in IC 36-9-23-17 through IC 36-9-23-20.
- (10) Issue additional revenue bonds as part of the same issue if the issue does not meet the full cost of the project for which the bonds were issued as provided in IC 36-9-23-17 through IC 36-9-23-20.
- (11) Issue additional revenue bonds for improvements, enlargements, and extensions as provided in IC 36-9-23-18.
- (12) Covenant with the holders of the revenue bonds for the following:
 - (A) Protection of the holders concerning the use of money derived from the sale of bonds.
 - (B) The collection of necessary rates and charges and segregation of the rates and charges for payment of principal and interest.

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(C) Remedy if a default occurs.

The covenants may extend to both repayment from revenues and other money available to the district by other statute as provided in IC 36-9-23.

(b) In the same manner as provided by IC 36-9-23, the rates or charges made, assessed, or established by the district are a lien on a lot, parcel of land, or building that is connected with or uses the works by or through any part of the sewage system of the district. The liens:

- (1) attach;
- (2) are recorded;
- (3) are subject to the same penalties, interest, and reasonable attorney's fees on recovery; and
- (4) shall be collected and enforced;

in substantially the same manner as provided in IC 36-9-23-31 through IC 36-9-23-32."

Page 1, line 1, delete "IC 13-26-4-2.5" and insert "IC 14-33-5-21.5".

Page 1, line 3, delete "Sec. 2.5." and insert "Sec. 21.5".

Page 1, line 3, delete "a board election under" and insert "**all districts.**"

(b) Notwithstanding any other law that applies to the establishment of rates and charges by a district, after the introduction of an ordinance establishing rates and charges but before the ordinance is finally adopted, in addition to any other notice required under this chapter, the notice of the hearing setting forth the proposed schedule of rates and charges must be given by mail to all freeholders in the district if the ordinance establishing the rates and charges is introduced after June 30, 2003. A notice mailed under this subsection must be postmarked not later than ten (10) days before the date fixed in the notice for the hearing. The notice required under this subsection may be included in the district's periodic billing if the billing is postmarked not later than ten (10) days before the date fixed in the notice for the hearing.

(c) In the case of an increase or a readjustment in the rates or charges that is greater than five percent (5%) per year, as calculated from the rates and charges in effect from the date of the district's last rate increase before January 1, 2003, the notice required by subsection (b) must contain a statement informing the freeholders in the district of the freeholders' right, under section 21.7 of this chapter and IC 36-9-23-26.1, to file a petition objecting to any ordinance finally adopted by the board that increases the rates and charges.

SECTION 6. IC 14-33-5-21.6 IS ADDED TO THE INDIANA



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CODE AS A NEW SECTION TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2003]: **Sec. 21.6. (a) This section applies to all districts.**

(b) The presumption established by IC 36-9-23-25(b) does not apply to rates and charges established after June 30, 2003, by a district under section 21 of this chapter.

SECTION 7. IC 14-33-5-21.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2003]: **Sec. 21.7. (a) This section applies to all districts.**

(b) Notwithstanding any other law that applies to the establishment of rates and charges by a district, a written petition objecting to an ordinance finally adopted after June 30, 2003, that increases or readjusts the rates and charges of the district may contain the minimum number or proportion of freeholders in the district described in IC 14-33-2-2 as an alternative to the petition requirements described in IC 36-9-23-26.1(a)(2). In all other respects, the procedure provided in IC 36-9-23-26.1 applies to a written petition filed in accordance with this subsection.

SECTION 8. [EFFECTIVE JULY 1, 2003] IC 14-33-5-2, IC 14-33-5-4, and IC 14-33-5-6, all as amended by this act, apply to annual meetings of conservancy districts held after June 30, 2003."

Page 1, delete lines 4 through 17.

Delete pages 2 through 3.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 291 as introduced.)

LAWSON C, Chairperson

Committee Vote: Yeas 7, Nays 0.

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